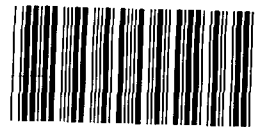


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335248

SEP 12 1988
SUPERFUND BRANCH

Ref: 8PM-GM

OCT 06 1988

SF FILE NUMBER

S-5-03

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Sheldon B. Elman
Deputy Director
Office of Administration and Planning
Utah Department of Health
P.O. Box 16700
Salt Lake City, UT 84116-0700

Re: Superfund Cooperative
Agreement No. V 008427-01-07

Dear Mr. Elman:

Enclosed are copies of Amendment No. 15 approving your request of \$750,000 for the Remedial Investigation/Feasibility Study for Richardson Flats Tailings site.

We offer two comments with respect to the scope of work. First, the RI/FS and Plan should be submitted to EPA for review and approval (not comment) as per the State Memorandum of Agreement (SMOA). Second, the draft Record of Decision submittal should be inserted into the project schedule at Y + 64.

Please sign and date all of the forms, retain one copy for your file, and return the remaining copies by certified mail within three weeks of the date of receipt of this letter to:

Martha Nicodemus, Chief
Grants Management Branch (8PM-GM)
Environmental Protection Agency
999-18th Street, Suite 500
Denver, CO 80202-2405

If you have any questions regarding this amendment, please
call Beverly Goodsell at (303) 293-1847.

Sincerely,

Kerrigan G. Clough
Assistant Regional Administrator
for Policy and Management

Attachment

cc: Jack Mohr
Ursula Trueman, UDH

U.S. ENVIRONMENTAL PROTECTION AGENCY EPA ASSISTANCE AGREEMENT/AMENDMENT PART I - ASSISTANCE NOTIFICATION INFORMATION				1. ASSISTANCE ID NO. V008427-01-07		2. LOG NUMBER EIGHT-V-43	
				3. DATE OF AWARD SEP 29 1988		4. MAILING DATE OCT 06 1988	
5. AGREEMENT TYPE Cooperative Agreement <input type="checkbox"/> Grant Agreement <input type="checkbox"/> Assistance Amendment <input checked="" type="checkbox"/> 15				6. PAYMENT METHOD <input type="checkbox"/> Advance <input type="checkbox"/> Reimbursement <input checked="" type="checkbox"/> Letter of Credit 68-13-0801			
				Send Payment Request To:		7. TYPE OF ACTION Increase	
RECIPIENT ORGANIZATION	8. RECIPIENT Utah Department of Health Bureau of Solid & Hazardous Waste P.O. Box 16690 Salt Lake City, UT 84116-0690			9. PAYEE Utah Department of Health Bureau of Solid & Hazardous Waste P.O. Box 16690 Salt Lake City, UT 84116-0690			
	EIN NO. 87-6000545		CONGRESSIONAL DISTRICT 3		10. RECIPIENT TYPE State		
	11. PROJECT MANAGER AND TELEPHONE NO. Kenneth L. Alkema, Director Division of Environmental Health Utah Department of Health (801) 538-6170			12. CONSULTANT (WWT Construction Grants Only) N/A			
EPA CONTACT	13. ISSUING OFFICE (City/State) Denver, Colorado			14. EPA PROJECT/STATE OFFICER AND TELEPHONE NO. C. Jay Silvernale Environmental Protection Agency 999-18th Street, Suite 500 Denver, CO 80202-2405 (303) 293-1518			
	15. EPA CONGRESSIONAL LIAISON & TEL. NO. Pat Gaskins (202) 382-5184		16. STATE APPL ID (Clearinghouse) UT880112-010		17. FIELD OF SCIENCE N/A		18. PROJECT STEP (WWT CG Only) N/A
	19. STATUTORY AUTHORITY CERCLA Section 104 as amended		20. REGULATORY AUTHORITY CFR Part 29,30,33 Subpart E & 300		21. STEP 2 + 3 & STEP 3 (WWT Construction Only) N/A a. Treatment Level b. Project Type c. Treatment Process d. Sludge Design		
22. PROJECT TITLE AND DESCRIPTION Funding the RI/FS for Richardson Flat Tailings Site							
23. PROJECT LOCATION (Areas Impacted by Project)							
City/Place Salt Lake City		County Salt Lake		State UT	Congressional District 3		
24. ASSISTANCE PROGRAM (CFDA Program No. & Title) Haz. Sub. Response Trust Fund 66.802				25. PROJECT PERIOD 1/1/85 - 9/30/89		26. BUDGET PERIOD 1/1/85 - 9/30/89	
27. COMMUNITY POPULATION (WWT CG Only) N/A		28. TOTAL BUDGET PERIOD COST \$2,317,523		29. TOTAL PROJECT PERIOD COST \$2,317,523			
FUNDS		FORMER AWARD		THIS ACTION		AMENDED TOTAL	
30. EPA Amount This Action		\$1,567,523		\$750,000		\$2,317,523	
31. EPA In-Kind Amount							
32. Unexpended Prior Year Balance							
33. Other Federal Funds							
34. Recipient Contribution							
35. State Contribution							
36. Local Contribution							
37. Other Contribution							
38. Allowable Project Cost		\$1,567,523		\$750,000		\$2,317,523	
39. FISCAL	Program Element	FY	Appropriation	Doc. Control No.	Account Number	Object Class	Obligation/Deoblig. Amount
	TFAY9A	88	68-20X8145	NS0132	8TFA08LL94	41.85	\$750,000

TABLE A - OBJECT CLASS CATEGORY (Non-construction) Richardson Flats		TOTAL APPROVED ALLOWABLE BUDGET PERIOD COST
1. PERSONNEL		\$114,183
2. FRINGE BENEFITS		36,539
3. TRAVEL		2,650
4. EQUIPMENT		210
5. SUPPLIES		600
6. CONTRACTUAL		580,000
7. CONSTRUCTION		0
8. OTHER		1,500
9. TOTAL DIRECT CHARGES		735,682
10. INDIRECT COSTS: RATE % BASE See special conditions		14,318
11. TOTAL (Share: Recipient, _____% Federal 100%)		750,000
12. TOTAL APPROVED ASSISTANCE AMOUNT		\$ 750,000
TABLE B - PROGRAM ELEMENT CLASSIFICATION (Non-construction)		
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12. TOTAL (Share: Recipient, _____% Federal _____%)		
13. TOTAL APPROVED ASSISTANCE AMOUNT		\$
TABLE C - PROGRAM ELEMENT CLASSIFICATION (Construction)		
1. ADMINISTRATION EXPENSE		
2. PRELIMINARY EXPENSE		
3. LAND STRUCTURES, RIGHT-OF-WAY		
4. ARCHITECTURAL ENGINEERING BASIC FEES		
5. OTHER ARCHITECTURAL ENGINEERING FEES		
6. PROJECT INSPECTION FEES		
7. LAND DEVELOPMENT		
8. RELOCATION EXPENSES		
9. RELOCATION PAYMENTS TO INDIVIDUALS AND BUSINESSES		
10. DEMOLITION AND REMOVAL		
11. CONSTRUCTION AND PROJECT IMPROVEMENT		
12. EQUIPMENT		
13. MISCELLANEOUS		
14. TOTAL (Lines 1 thru 13)		
15. ESTIMATED INCOME (If applicable)		
16. NET PROJECT AMOUNT (Line 14 minus 15)		
17. LESS: INELIGIBLE EXCLUSIONS		
18. ADD: CONTINGENCIES		
19 TOTAL (Share: Recipient, _____% Federal _____%)		
20. TOTAL APPROVED ASSISTANCE AMOUNT		\$

Cooperative Agreement No. V008427-01-07
Amendment No. 15

<u>Site</u>	<u>Program Element</u>	<u>FY</u>	<u>Appropriation</u>	<u>DCN</u>	<u>Account Number</u>	<u>Object Class</u>	<u>Amount of Change</u>	<u>Obligation Amount</u>
Portland	TFAY9A	85	68-20X8145	PY8015	5TFA08LL38	41.85	-0-	-0-
Portland	TFAY3A	88	68-20X8145	NS0125	8TFA08LL38	41.85	-0-	\$ 165,105 (total)
Mgmt. Asst	TFAY9A	88	68-20X8145	NS0077	8TFA08LJZZ	41.85	-0-	\$ 821,298
Sharon Steel	TFAY9A	85	68-20X8145	LSFG03	5TFA08LL40	41.85	-0-	\$ 253,000
Olson/Neihart	TFAY9A	85	68-20X8145	LSFG05	5TFA08LL64	41.85	-0-	\$ 132,188
Mayflower	TFAY9A	85	68-20X8145	LSFG06	5TFA08LL59	41.85	-0-	\$ 11,486
Park City	TFAY9A	85	68-20X8145	LSFG29	5TFA08LL37	41.85	-0-	\$ 21,481
Monticello	TFAY9A	85	68-20X8145	LSFG03	5TFA08LL73	41.85	-0-	\$ 7,000
Tooele Army D.	SGBY3A	87	68-20X8145	SR0114	NSGB08LP61	41.85	-0-	\$ 8,000
Hill AFB	TGBY3A	88	68-20X8145	NS0082	8TGB08L358	41.85	-0-	\$ 15,500
Defense/Ogden	SGBY3A	87	68-20X8145	SR0116	NSGB08LP60	41.85	-0-	\$ 8,000
Rose Park	SGBY3A	87	68-20X8145	SR0117	NSGB08LP07	41.85	-0-	\$ 5,000
Wasatch	TFAY9A	85	68-20X8145	PY8004	5TFA08LL72	41.85	-0-	\$ 100,000
Silver Creek	TFAY9A	88	68-20X8145	NS0099	8TFA08LJ37	41.85	-0-	\$ 19,465
Richardson Flats	TFAY9A	88	68-20X8145	NS0132	8TFA08LL94	41.85	\$750,000	\$ 750,000
TOTAL							\$750,000	\$ 2,317,523

PART III-AWARD CONDITIONS

a. GENERAL CONDITIONS

The recipient covenants and agrees that it will expeditiously initiate and timely complete the project work for which assistance has been awarded under this agreement, in accordance with all applicable provisions of 40 CFR Chapter I, Subpart B. The recipient warrants, represents, and agrees that it, and its contractors, subcontractors, employees and representatives, will comply with: (1) all applicable provisions of 40 CFR Chapter I, Subchapter B, INCLUDING BUT NOT LIMITED TO the provisions of Appendix A to 40 CFP Part 30, and (2) any special conditions set forth in this assistance agreement or any assistance amendment pursuant to 40 CFR 30.425.

b. SPECIAL CONDITIONS

(For cooperative agreements include identification or summarization of EPA responsibilities that reflect or contribute to substantial involvement.)

See attached special conditions pertaining to Richardson Flats

b. SPECIAL CONDITIONS (Continued)

PART IV

NOTE: The Agreement must be completed in duplicate and the Original returned to the Grants Administration Division for Headquarters awards and to the appropriate Grants Administrations Office for State and local awards within 3 calendar weeks after receipt or within any extension of time as may be granted by EPA.

Receipt of a written refusal or failure to return the properly executed document within the prescribed time, may result in the withdrawal of the offer by the Agency. Any change to the Agreement by the recipient subsequent to the document being signed by the EPA Award Official which the Award Official determines to materially alter the Agreement shall void the Agreement.

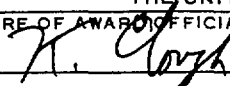
OFFER AND ACCEPTANCE

The United States of America, acting by and through the U.S. Environmental Protection Agency (EPA), hereby offers assistance/amendment to the Utah Department of Health

for 100 % of all approved costs incurred up to and not exceeding \$ 2,317,523

for the support of approved budget period effort described in application (including all application modifications) for federal assistance dated 12/20/84, as amended included herein by reference.

ISSUING OFFICE (Grants Administration Office)	AWARD APPROVAL OFFICE
ORGANIZATION/ADDRESS Grants Management Branch Environmental Protection Agency 999-18th Street, Suite 500 Denver, CO 80202-2405	ORGANIZATION/ADDRESS Office of Policy and Management Environmental Protection Agency 999-18th Street, Suite 500 Denver, CO 80202-2405

THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY		
SIGNATURE OF AWARD OFFICIAL 	TYPED NAME AND TITLE Kerrigan G. Clough, ARA for Policy and Management	DATE SEP 29 1988

This Agreement is subject to applicable U.S. Environmental Protection Agency statutory provisions and assistance regulations. In accepting this award or amendment and any payments made pursuant thereto, (1) the undersigned represents that he is duly authorized to act on behalf of the recipient organization, and (2) the recipient agrees (a) that the award is subject to the applicable provisions of 40 CFR Chapter I, Subchapter B and of the provisions of this agreement (Parts I thru IV), and (b) that acceptance of any payments constitutes an agreement by the payee that the amounts, if any found by EPA to have been overpaid will be refunded or credited in full to EPA.

BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION		
SIGNATURE	TYPED NAME AND TITLE Sheldon B. Elman, Director, Office of Pln & Mmg.	DATE

ATTACHMENT I
RICHARDSON FLATS TAILINGS
SPECIAL CONDITIONS

GENERAL PROVISIONS

1. Authority

The Environmental Protection Agency (EPA) awards this Cooperative Agreement (CA) in accordance with the Federal Grant and Cooperative Agreement Act of 1977. This Agreement is subject to all applicable EPA assistance regulations, including those contained in 40 CFR 30.

2. Procurement Standards

This Agreement is subject to the procurement standards of Title 40 of the Code of Federal Regulations Part 33.

3. Letter of Credit Procedures

In accepting this CA, the recipient agrees to the following conditions for the letter of credit method of financing:

- a. Cash drawdowns will occur only when needed for disbursements.
- b. Timely reporting of cash disbursements and balances will be provided, as required by the EPA Letter of Credit Users Manual.
- c. The same standards of timing and reporting will be imposed on secondary recipients, if any.
- d. When a drawdown under the letter of credit occurs, the recipient will show on the voucher (Form TFCS-5805) the CA number, the appropriate EPA number, and the drawdown amount applicable to each site/activity account. The eighth digit of the account number is the code to the appropriate activity assignment:

J -	Pre-Remedial Activities
L -	Remedial Investigation/Feasibility Study
N -	Remedial Design
R -	Remedial Action
E -	Removal Action

- S - Operation & Maintenance
- 3 - State/Federal Facility Liaison
- P - Oversight of Responsible Parties
(Extramural and Intramural)

- e. When funds for a specific activity have been exhausted but the work under the activity has not been completed, the recipient may not drawdown from Award Official.
- f. Funds remaining in an account after completion of an activity may be either returned to EPA or adjusted to another activity or site, at EPA's discretion.
- g. When an activity is completed, the recipient will submit a Financial Status Report (Standard Form (SF) 269) within 90 days to the EPA Award Official.
- h. Superfund recipients also must submit the SF 269 within 90 days after the close of each budget period. If the budget period is longer than one year the report must be submitted annually, based on the anniversary date of the award.

Failure on the part of the recipient to comply with the above conditions may cause the unobligated portions of the letter of credit to be revoked and the financing method changed to a reimbursable basis.

4. Prompt Payment Act Provisions

In accordance with Section 2(d) of the Prompt Payment Act (PL 97-177), Federal funds may not be used by the recipient for the payment of interest penalties to contractors when bills are paid late, nor may interest penalties be used to satisfy cost-sharing requirements. Obligations to pay such interest penalties will not be obligations of the United States.

5. Lobbying

No portion of this award may be used for lobbying or propaganda purposes as prohibited by 18 USC section 1913 or by section 607(a) of PL 96-74.

6. MBE/WBE Utilization Reporting Requirements

The recipient agrees to submit to the EPA Award Official a completed EPA SF 334 within 30 days after the end of each Federal fiscal quarter. Reporting must continue for each Federal fiscal quarter thereafter until award of the last

subagreement for the activities or tasks identified in the CA.

7. Records Retention

The State must retain original documentation for Superfund cost recovery purposes. In accordance with 40 CFR Parts 30 and 33, the State must retain original records generated under this CA for a minimum of three years from either the date of submission of the final Financial Status Report or until any litigation or cost recovery actions begun during the project are completed, whichever is longer. The State will notify the EPA Project Officer (PO) 90 days in advance of the proposed disposition of any records from the file developed for this project. The State further agrees to notify the EPA PO 90 days in advance of the lapsing of the required record retention period, to allow EPA to determine appropriate disposition. No files or documents concerning this CA shall be disposed of without written EPA approval.

8. EPA Measure for Non-compliance

If the State should fail to comply with one or more condition in this agreement, EPA may terminate the CA in whole or in part. Prior to any termination EPA will provide the State with 60 days notice and an opportunity for consultation with the Regional Administrator or his or her designee.

9. Indirect Cost Rate

The authorized budget includes indirect costs based on the State's appropriate FY rate.

July 1, 1987 - June 30, 1988 = 19.3 percent

A new negotiated indirect cost rate will be effective July 1, 1988.

Indirect costs may not be reimbursed until an indirect cost rate is negotiated with your cognizant Federal Agency.

SUPERFUND PROGRAM PROVISIONS

10. Fund Balancing

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) section 104 (c) (4) requires that CERCLA-funded actions provide a cost-effective response, balancing the need for protection of public health, welfare, and the environment against the availability of amounts from the fund to respond at other sites. If the State requests CERCLA funding for additional activities at the site, EPA will evaluate the request against available fund monies to determine whether it is appropriate. This CA does not commit EPA to future funding for response actions at the site.

11. The National Contingency Plan (NCP)

All activities conducted under this Contract shall be consistent with the NCP, 40 CFR Part 300. Remedial alternatives developed as part of any remedial investigation and feasibility study funded under this Agreement will be identified, evaluated, and ultimately categorized as source control or management of migration measures based upon the factors established in section 300.68(e) of the NCP.

12. Project Reviews by Remedial Project Managers (RPMs) and State Project Officer (SPOs)

The EPA RPM or his/her designee will conduct periodic reviews and visits to evaluate project activities to assure compliance with applicable EPA requirements and regulations. The SPO agrees to ensure that schedules and reporting requirements are met or that any changes are agreed to by EPA. All State-proposed modifications to schedules or activities will be reported to the EPA CA PO for review and concurrence. The EPA CA PO agrees to notify the SPO of schedule changes resulting from EPA enforcement activities.

13. Site Access and Permits

The State agrees to satisfy all Federal, State, and local requirements, including permits and approvals, necessary for implementing activities addressed in this CA. The State will provide access to the site as well as rights-of-way and easements necessary to complete the response actions. The State will provide access to EPA employees and contractors at all reasonable times. The State may not indemnify or approve any compensation to property owners without EPA approval.

14. Community Relations

The State and EPA agree that a site-specific community relations plan will be developed and submitted by the State to EPA for approval. This plan must be approved by EPA prior to the initiation of any field activities at the site. In developing its plan, the State agrees to comply with all relevant EPA policy and guidance on community relations programs and procedures.

15. Site Safety Plan

A final safety plan shall be prepared for field activities performed at the Richardson Flats Tailings Site pursuant to this CA. These plans shall be submitted to the EPA CA PO for review prior to initiation of any field activities. The plan shall be consistent with the requirements of the NCP, EPA policies and guidance and applicable Federal and State safety standards and guidance, including Occupational Safety and Health Administration. Each subagreement awarded under this Agreement must contain a condition that requires contractors and subcontractors to comply with the approved safety plan and all relevant Federal health and safety standards.

16. Quality Assurance Project Plan

30 days prior to performing any sampling in connection with this project, a site-specific Quality Assurance Project Plan (QAPP) must be approved by EPA to describe the measurement systems it intends to use on site. In all environmental sampling and/or analysis, a QAPP must be developed in accordance with "Guidelines and Specifications for Preparing Project Plans (QAMS-005/80)". Data produced must be able to withstand the scrutiny of litigative proceeding; this requires appropriate chain-of-custody, document control, and QAPP documentation. Data collection must be cost effective. Cost of generating data cannot significantly exceed costs associated with similar analyses provided by the National Contract Laboratory Program. Data turnaround times must meet remedial program needs.

17. Access to Site Files and Confidentiality of Information

- a. The State will allow public access to its records in accordance with State law. EPA will allow public access to its records in accordance with the procedures established under the Freedom of Information Act (PL 93-502), regulations promulgated pursuant thereto, and Agency guidance. Both parties agree to protect each other's claims for confidentiality, particularly with regard to documents related to pending or ongoing enforcement actions, generated by either the State or EPA. The State will ask for EPA concurrence before

releasing EPA documents.

- b. At EPA's request and to the extent allowed by State law, the State shall make available to EPA any information in its possession concerning the site. At the State's request and to the extent allowed by Federal law, EPA shall make available to the State any information in its possession concerning their site. If any information is provided to EPA by the State under a claim of confidentiality, it will be treated in accordance with 40 CFR Part 2 if the State has given EPA notice of the claim of confidentiality. EPA will not disclose information submitted under a claim of confidentiality unless EPA is required to do so by Federal law and has given the State advance notice of EPA's intent to release that information. Absent notice of such claim, EPA may make said information available to the public without further notice.

18. Reporting Requirements

- a. The State agrees to develop a monthly schedule for a 12 month completion of the RI/FS study which details specific tasks to be initiated and completed each month.
- b. If the State decides to provide a contractor for this project, a detailed work plan (draft) must be submitted to the Environmental Protection Agency for review and approval within two weeks of securing a contractor. The RI/FS study shall be conducted as detailed in the approved work plan.
- c. The State agrees to submit monthly progress reports as well as quarterly summaries of the work as it proceeds on the RI/FS study. These reports shall be due on the tenth of each month and shall include a narrative on the work initiated, work completed, problems encountered, and any proposed changes in the schedule. In addition, these reports shall include a graphic summary of: expenditures by object class for each activity, both to date and since the previous report; estimates (percentages) of work elements completed for each activity, estimated variances (cost and time) expected at project completion; and any significant findings, problems encountered, schedule compliance (including justification for non-compliance) and any additional funding needs.

19. Submission of Technical and Procurement Documents

The State agrees to submit all draft and final plans,

reports, specifications, and/or recommendations to the EPA CA PO for review and concurrence, prior to issuance or implementation, to ensure technical adequacy and consistency with the scope of work of this Agreement. Final subagreement documents or plans and subagreement changes shall be submitted to the EPA CA PO prior to issuance for review to ensure compliance with the terms of this Agreement.

20. CERCLA Health-Related Activities

The State agrees that no human subject testing or health effects analyses may be funded under this Agreement. Any CERCLA health-related activities must be coordinated with the United States Department of Health and Human Services, pursuant to sections 104(b) and 104(i) of CERCLA.

21. Exclusion of Third Parties

This Agreement is intended to benefit only the State and EPA. It extends no benefit or rights to any party not a signatory to this Agreement. In addition, EPA does not assume any liability to third parties with respect to losses due to bodily injury or property damages that exceed the limitations contained in the provisions of 28 USC sections 1346(b), 2671-2680. To the extent permitted by State law, the State does not assume liability to any third parties with respect to losses due to bodily injury or property damage.

22. Responsible Party Activities

If, during the period of performance for this Agreement, responsible parties agree to perform or to pay for the performance of any activities included in the statement of work (SOW) for this Agreement, EPA and the State agree to negotiate jointly any necessary modifications to this Agreement or initiate a State Enforcement CA. If appropriate, this Agreement may be amended to adjust the State's letter of credit and the project SOW accordingly.

23. Contractor Conflict of Interest

EPA has determined that participation in a response action at a site by a contractor that is a potentially responsible party (PRP) or works for a PRP at the site could create an organizational conflict of interest (i.e., the contractor would be placed in a position where its interests would conflict with its ability to perform the work properly or would otherwise adversely affect State or Federal Enforcement action). Therefore, the State shall require each bidder or offeror on any subagreement funded under this CA to provide, with its bid or proposal: (1) information on its status and the status of parent companies, subsidiaries, affiliates, subcontractors, and current clients as PRPs at the site; (2) certification that, to the best of its knowledge and belief; and (3) a statement that it immediately shall disclose any such information discovered after submission of its bid or proposal or after award. The State shall evaluate such information and shall exclude any bidder or offeror if the State determines the bidder's or offeror's conflict of interest is significant and cannot be avoided or otherwise resolved.

24. Subagreement Conflict of Interest and Technical Support for Enforcement Activities

The State shall include the following clauses in each subagreement for services or construction awarded under this agreement.

- a. The contractor shall not provide data generated or otherwise obtained in the performance of its responsibilities under this contract to any party other than State and Federal agencies and their authorized agents without the consent of the State.
- b. The contractor shall not accept employment from any party other than State or Federal agencies for work directly related to the site(s) covered under this contract for a period of three years from termination of the contract, or until any litigation related to the site(s) is completed, whichever is longer, unless it has received a written release from this restriction from the contracting State agency, including an EPA concurrence.
- c. The contractor, upon request, shall provide witnesses and documentation of activities performed and costs incurred under this contract to State and Federal agencies during the period of performance and for three years from termination of the contract, or until any litigation related to the site(s) is completed,

whichever is longer. The contractor shall be entitled to reasonable compensation for any such activities performed.

25. Award of Contracts or Subagreements to Japanese Citizens or Nationals

The following special conditions applies to subagreements awarded under this assistance, this agreement during the remainder of the fiscal year ending September 30, 1988.

The recipient agrees that no subagreement (contract or subcontract) for construction, alteration, or repair of a public building or public work will be awarded to (1) a Japanese Citizen or national; (2) a firm controlled directly or indirectly by Japanese citizens or nationals, or; (3) a supplier of any product if more than 50 percent of the total cost of the product is allocable to production or manufacture in Japan.

The recipient further agrees that no subagreement for architect, engineering, or other services directly related to the preparation for or performance of such construction, alteration, or repair will be awarded to a Japanese citizen or national or a firm controlled directly or indirectly by Japanese citizens or nationals.

All public notices requesting proposals or bids must state that bids or proposals from such firms or suppliers shall be deemed nonresponsive and rejected.

The recipient may request EPA to waive this condition where the recipient believes such a waiver to be in the public interest.

26. Emergency Response Actions During a Remedial Project

Any emergency response activities conducted pursuant to the NCP, 40 CFR section 300.65, shall not be restricted by the terms of this Agreement. EPA and the State may jointly suspend or modify the remedial activities in the SOW of this Agreement during and subsequent to necessary emergency response actions.

27. Negation of Agency Relationship

Nothing contained in this Agreement shall be construed to create, either expressly or by implication, the relationship of agency between EPA and the State. Any standards, procedures, or protocols prescribed in this Agreement to be followed by the State during the performance of its obligations under this Agreement are to assure the quality of the final product of the actions contemplated by this Agreement, and do not constitute a right to control the actions of the State. EPA (including its employees and contractors) is not authorized to represent or act on behalf of the State in any matter relating to this Agreement, and the State (including its employees and contractors) is not authorized to represent or act on behalf of EPA in any matter related to this Agreement. Neither EPA nor the State shall be liable for the contracts, acts, errors, or omissions of the agents, employees, or contractors of the other party entered into, committed, or performed with respect to or in the performance of, this Agreement.

28. Enforcement and Cost Recovery

- a. At the request of EPA, the State agrees to pursue administrative or civil enforcement action at the completion of a State enforcement lead RI/FS project to 1) ensure performance of the remedial design and remedial action by PRPs, or 2) collect from PRP the funds necessary to conduct the remedial design and remedial action. The State agrees to coordinate its enforcement with EPA and to submit its proposed enforcement schedule and strategy to EPA for review and concurrence before design and/or field activities commence.

b. Notice of Intent to Settle or Initiate Proceedings

EPA and the State agree that, with respect to the claims that each may be entitled to assert against any third person (herein called the "responsible party," whether one or more) for reimbursement of any services, materials, monies, or other thing of value expended by EPA or the State for response activity at the site(s) described herein, neither EPA nor the State will enter into a settlement with, or initiate a judicial or administrative proceeding against, a responsible party for the recovery of such sums except after having given notice in writing to the other party to this Agreement not less than 30 days in advance of the date of the proposed settlement or commencement of the proposed judicial or administrative proceedings.

Neither party to this Agreement shall attempt to negotiate for nor collect reimbursement of any response costs on behalf of the other party, and authority to do so is hereby expressly negated and denied.

c. Cooperation and Coordination in Cost Recovery Efforts

EPA and the State agree that they will cooperate and coordinate in efforts to recover their respective costs of response actions taken at the site described herein, including the negotiation of settlement and the filing and management of any judicial actions against potential third parties. This shall include coordination in the use of evidence and witnesses available to each in the preparation and presentation of any cost recovery action, excepting any documents or information which may be confidential under provisions of any applicable State or Federal law or regulation.

d. Litigation Under CERCLA Sections 106 and 107

The award of this Agreement does not constitute a waiver of EPA's right to bring an action against any person or persons for liability under sections 106 and 107 of CERCLA, or any other statutory provision or common law.

e. Sharing Recovered Funds with EPA

Any recovery achieved by the State pursuant to settlement, judgement, or consent decree or any action against any of the responsible parties will be shared between the EPA and the State in proportion to the contribution of each in the site response activities under CERCLA and State law.

f. Judicial Action in the United States (U.S.) District Court

EPA and the State agree that judicial action taken by either party against a potentially responsible party pursuant to CERCLA for recovery of any sums expended in response actions at the Richardson Flats Tailings site shall be filed in the U. S. District Court for the judicial district in which the site is located, or in other such judicial district of the U.S. District Court as may be authorized by section 113 of CERCLA, and agreed to in writing by the parties of this Agreement.

29. CERCLA REMEDIAL INVESTIGATION/FEASIBILITY STUDY COOPERATIVE AGREEMENTS

a. Cost Sharing at Publicly Operated Sites

If EPA determines that the site was operated by the State or one (or more) of its political subdivisions at the time of disposal, the State will be responsible for 50 percent of all response costs at the site. In that event, the CA or any other CA or Contract to undertake remedial action at the site shall provide for payment by the State of 50 percent of the costs of any removal actions, the remedial investigation, the feasibility study, the remedial design, and any remedial implementation related to the site.

b. RI/FS Statements of Work

In conducting the RI/FS funded by this Agreement, the State agrees to assure compliance with the manuals, Guidance on Remedial Investigations Under CERCLA and Guidance of Feasibility Studies Under CERCLA, OERR, June 1985, or updated versions thereof and all other relevant EPA policies and guidance. Others include:

- o U.S. EPA, Office of Solid Waste and Emergency Response, Interim Guidance on Potentially Responsible Party Participation in Remedial Investigations and Feasibility Studies, (pending).
- o U.S. EPA, Office of Solid Waste and Emergency Response, Interim Guidance on Compliance with Applicable or Relevant and Appropriate Requirements, Federal Register, August 27, 1987.

30. In the event that the State determines after execution of the CA that State laws or other restrictions prevent the State from acting consistent with CERCLA, as amended by SARA, the State must agree to promptly notify and consult with EPA regarding the use of such laws or other restrictions.
31. The State agrees that no monies provided under this agreement will be spent on Feasibility Study activities without EPA PO approval.
32. The State agrees to assume responsibility for compiling the Administrative Record in accordance with EPA regulations.
33. As of October 17, 1989, all states receiving Cooperative Agreement funds must meet the capacity assurance requirements being developed under the Superfund Amendments and Reauthorization Act Section 104(k).

34. If the State and EPA agree that any of the above conditions are not applicable to the specific activities funded under this CA, a statement stating such shall be signed by both the State and EPA. These conditions will then be deleted from the CA.